IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

Bail Appl..No. 3880 of 2007()

CRIME NO.224/07 OF KOLLAM EAST POLICE STATION

PETITIONERS:

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1. A.BABU, AGED 57 YEARS,
   SON OF ABDUL AZEEZ, ANUPAMA, LEKSHMI NADA,
   KOLLAM.

2. S.RAMANUJAM AGED 48 YEARS,
   SON OF SWAMINATHAN, LEKSHMI BHAVAN, SANKAR NAGAR,
   CHINNAKKADA, KOLLAM.

3. V.THULASI ACHARY, AGED 57 YEARS,
   SON OF VELAMAYIL ACHARY, THULASI BHAVAN,
   NEAR T.B.CENTRE, VADAKKUMBHAGAM, KOLLAM.

4. K.NELLAI KUMAR, AGED 55 YEARS,
   SON OF KOLAPPAN ACHARY, VENI BHAVAN, ASHRAMAM,
   KOLLAM.

5. P.JANARDHANAN, AGED 52 YEARS,
   SON OF N.N.PADMANABHANACHARY, PONNAMMAL BUILDING,
   THAMARAKULAM, KOLLAM.

6. S.RADHAKRISHNAN, AGED 45 YEARS,
   SON OF S.SWAMINATHAN, SARAVANA BHAVAN,
   RESIDENCY NAGAR, KADAPPAKKADA, KOLLAM.

7. G.GOPKUMAR, AGED 62 YEARS,
   SON OF PARAMESWARAN PILLAI, THOPPILKIZHAKKATHIL
   VEEDU, THEVALLY, KOLLAM.

8. G.SATHEESH @ SWAMINATHAN, AGED 36 YEARS,
   SON OF GOPALAKRISHNAN, SARASWATHI NIVAS,
   PATTATHANAM, KOLLAM.

9. S.AYYAPPAN, AGED 62 YEARS,
SON OF SUBRAMANIAN ACHARY, VRINDAVANAM,
KADAPPAKADA, KOLLAM.

BY ADV. SRI.JOHNSON GOMEZ

RESPONDENTS:

THE STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT
ERNAKULAM, THROUGH THE SUB INSPECTOR OF POLICE,
KOLLAM EAST POLICE STATION, KOLLAM.

BY P.P. SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 3880 OF 2007

Dated this the 27th day of June, 2007

ORDER

Application for anticipatory bail. The petitioners face allegations, inter alia, under Secs.332 and 353 read with Sec.149 of the IPC. The crux of the allegations is that on 5/3/07, while a sales tax raid was conducted in the premises of a jewellery at Kollam, the petitioners along with the 1st accused, who is the President of the Kollam Merchants' Association, allegedly obstructed and deterred the Sales Tax Officer from discharging his official duty. He was allegedly fisted on the nose.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. They are not named in the F.I.R. The 1st accused alone is named in the F.I.R. In favour of the 1st accused, though his application for

anticipatory bail was dismissed by this Court as per order dated 4/4/07, there was a direction that he can surrender before the Investigating Officer. It is prayed that directions under Sec.438 of the Cr.P.C. may be issued in favour of the petitioners who are not even named in the F.I.R.

3. The learned Public Prosecutor opposes the application. There are no circumstances justifying the invocation of the jurisdiction under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

4. Not naming the petitioners in the F.I.R. cannot be reckoned as a sufficient reason in the facts and circumstances of this case to justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. But, certainly the petitioners shall be entitled to surrender before the learned Magistrate or the Investigating Officer and then seek bail in the regular and ordinary course. Needless to say, the petitioners' applications for regular bail, after such surrender, must be considered by the learned Magistrate in accordance with law, on merits and expeditiously – on the date of surrender itself.

5. With the above observations, this Bail Application is

dismissed.

6. Hand over a copy of this order to the learned counsel for the petitioners.

Sd/-
(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge